

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: COLOPLAST CORP. PELVIC SUPPORT SYSTEMS
PRODUCTS LIABILITY LITIGATION

Lynette Klauck, et al. v. Analytic Biological Solutions, et al.,)
D. Minnesota, C.A. No. 0:13-943) MDL No. 2387

TRANSFER ORDER

Before the Panel: Pursuant to Panel Rule 7.1, defendants RTI Biologics, Inc., and RTI Donor Services, Inc. (RTI) have moved to vacate our order conditionally transferring the action (*Klauck*) to the Southern District of West Virginia for inclusion in MDL No. 2387. Plaintiffs and defendant Coloplast Corp. oppose the motion.

The actions in this MDL “share factual issues arising from allegations that defects in Coloplast’s pelvic surgical mesh products cause various and serious injuries to women who are treated with the products to address certain medical conditions (e.g., pelvic organ prolapse and stress urinary incontinence).” See *In re: Coloplast Corp. Pelvic Support Prods. Liab. Litig.*, 883 F. Supp. 2d 1348, 1348 (J.P.M.L. 2012). In opposing transfer, RTI argues that it is not similarly situated to the other defendants in *Klauck* because it does not manufacture a “product,” but, rather, provides services in the form of acquisition and preparation of donated human tissue for implantation.¹ RTI further argues that plaintiffs’ product liability and breach of warranty claims against RTI are not viable under Minnesota’s version of the Uniform Anatomical Gift Act. We find these arguments unavailing. Transfer under Section 1407 does not require a complete identity of factual or legal issues, or a complete identity of parties.² See *In re: Bank of N.Y. Mellon Corp. Foreign Exch. Transactions Litig.*, 857 F. Supp. 2d 1372-73 (J.P.M.L. 2012). And the statute does not permit us to evaluate the merits of plaintiffs’ claims. See *In re Ivy*, 901 F.2d 7, 9 (2d Cir.1990) (“Section 1407 does not empower the MDL Panel to decide questions going to the jurisdiction or the merits of a case....”); *In re: Oil Spill by the Oil Rig “Deepwater Horizon” in the Gulf of Mexico, on Apr. 20,*

¹ The complaint in *Klauck* alleges that the plaintiff wife was implanted with two pelvic products during a single procedure – the Aris Transobturator Tape System (alleged to have been manufactured, marketed, and distributed by the non-RTI defendants in the action) and Suspend Fascia Lata. As alleged in the complaint, RTI Biologics, Inc., is engaged in the preparation of donated human and bovine tissue for transplantation, and prepares a number of biologic implants – including the Suspend product – for various uses.

² We note that in our initial order of centralization, we transferred, in its entirety, a somewhat similar action (*White*), over the objections of a non-Coloplast defendant therein (TEI Biosciences, Inc.) that the claims against it involved a product that was not a synthetic mesh product. See 883 F. Supp. 2d at 1349. We did so because the complaint in *White* indicated that the TEI product and the Coloplast product had been implanted on the same day, and that the subject plaintiff’s alleged injuries were indivisible. *Id.* The same is true with respect to *Klauck*.

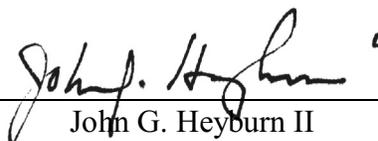
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2010, 764 F. Supp. 2d 1352, 1353 n.1 (J.P.M.L. 2011) (citing *In re Ivy*, stating that Panel was not authorized to assess viability of party's counterclaim).

After considering all argument of counsel, we find that *Klauck* involves common questions of fact with actions previously transferred to MDL No. 2387, and that transfer will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. Moreover, transfer is warranted for the reasons set out in our original order directing centralization. As mentioned above, in that order, we held that the Southern District of West Virginia was an appropriate Section 1407 forum for actions sharing factual issues arising from allegations that defects in Coloplast's pelvic surgical mesh products cause various and serious injuries to women treated with the products. *See* 883 F. Supp. 2d at 1348. The record demonstrates that *Klauck* shares factual issues with actions already in the MDL. *See Klauck* Compl. ¶¶ 32-35 (alleging that the plaintiff wife suffered various severe personal injuries after undergoing a surgical procedure involving implantation of defendants' products to treat her stress urinary incontinence and/or pelvic organ prolapse).

IT IS THEREFORE ORDERED that pursuant to 28 U.S.C. § 1407, this action is transferred to the Southern District of West Virginia, and, with the consent of that court, assigned to the Honorable Joseph R. Goodwin for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION



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